IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Crl.Rev.Pet.No. 2806 of 2007()

CRA.453/03 OF ADDL.SESSIONS JUDGE, THIRUVANANTHAPURAM
CC.150/02 OF CJM, THIRUVANANTHAPURAM

REVN. PETITIONER: APPELLANT/ACCUSED

V.J.THOMAS, C.P.7/332, THILAK NAGAR,
PAROTTUKONAM, NALANCHIRA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.SERGI JOSEPH THOMAS

RESPONDENTS: RESPONDENTS (COMPLAINANT & STATE)

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1. D'CRUZ, SENIOR BRANCH MANAGER,
THE FEDERAL BANK LTD., PALAYAM BRANCH,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2806 OF 2007 A

Dated this the 22nd day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.150/2002 on the file of the CJM, Thiruvananthapuram challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions in support of the revision:-

The two cheques in question were issued pursuant to Exhibits D1 and D2 letters from the complainant Bank requesting him to regularise the account of the Bank since the value of shares pledged by the revision petitioner while availing of the overdraft facility for Rs.8,00,000/- had subsequently gone down necessitating an enhancement of the value of the security. So Exts.P1 and P2 cheques were issued only for enhancing the value of the security and at that time since there was no default on the part of the revision petitioner with regard to the overdraft facility availed by him, it cannot be said that Exts.P1 and P2 cheques were issued in discharge of debt or liability within the meaning of section 138 of the Negotiable Instruments Act. The person examined as PW1 has not been proved to be the Manager of the complainant Bank competent to give evidence before the court. He was pretending ignorance of many of the questions put to him since according to him, he can only make a statement only after

verifying the records. On account of the Bank not selling the shares in spite of timely advice by the revision petitioner, it is the revision petitioner who has sustained heavy loss.

6. I am afraid that I cannot agree with the above submissions. It may be true that Exts.P1 and P2 cheques for a total amount of Rs.2,75,000/- (Rupees two lakhs seventy five thousand only) were issued for regularising the accounts of the Bank consequent on the reduction in the value of the security in the form of shares retained by the Bank while permitting the revision petitioner to avail the overdraft facility. But then, it cannot be contended that the cheques are not supported by consideration. It may also be true that at the time of handing over the cheques, there was no default committed in the overdraft facility extended to the revision petitioner. But the very fact that the Bank has instituted a suit against the revision petitioner before the Debt Recovery Tribunal for realising the debt due to the Bank will definitely indicate that the revision petitioner had committed default in the repayment of the loan. When the purpose of giving Exts.P1 and P2 cheques was for enhancing the worth of the security given to the Bank, it was definitely one for consideration

and consequent on the default committed by the revision petitioner, the Bank was fully justified in proceeding to encash the cheques. I, therefore, do not find any merit in the said contention.

7. As regards the locus standi of PW1 to represent the complainant Bank, it was not even suggested to him that he was not the Manger of the complainant Bank. When the transaction is with a Bank, a Manager, who has subsequently taken charge, can depose only with regard to the records of the Bank. When the competence of PW1 to give evidence on behalf of the complainant was not specifically challenged, it is too late in the day for the revision petitioner to contend that PW1 was not a competent witness.

8. With regard to the further contention that it was the revision petitioner who sustained heavy loss on account of the Bank not selling the shares at the appropriate time, the remedy the revision petitioner is to sue the Bank for the loss, if any, sustained by him.

9. On the facts and circumstances of the case, the conviction recorded by the courts below after a careful evaluation of the oral and documentary evidence cannot be faulted and the

same is confirmed.

10. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.2,75,000/- (Rupees two lakhs and seventy five thousand only) within four months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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